

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. NM MC 79698 through NM MC 79703.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: John R. Kuhn, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

John R. Kuhn appeals from the New Mexico State Office, Bureau of Land Management (BLM), decision of January 14, 1981, which declared the Mineral Queen Nos. 1 through 4, and the Johnny Nos. 1 and 2 mining claims abandoned and void because evidence of annual assessment work for the year ending September 1, 1980, had not been filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation at 43 CFR 3833.2-1.

Appellant states on appeal:

I filed my proof of labor with the County Clerk of Lincoln County N.M. in December 1980. My receipt (photocopy enclosed) will show that my proof of labor was filed

at 10:20 AM on December 24, 1980 in book 25 page 107. If they had mailed my papers to me on that day I would have photocopied them and sent them on to the BLM office in Santa Fe immediately [sic]. I suppose because the county offices were closing at noon on Xmas Eve afternoon that they just forgot about it.

Additionally, appellant states that he did not receive the return copies until January 9, 1981, whereupon he immediately sent copies to the BLM state office. Finally, appellant states that he should not be penalized for the county clerk's failure to perform his duty.

Appellant's claims were located on December 5, 1970, and recorded with BLM on October 18, 1979. Proof of labor for the 1979 assessment year was also filed with BLM on October 18, 1979. Appellant's evidence of annual assessment work performed or notices of intention to hold for the following year, due on or before December 30, 1980, were not received until January 12, 1981.

[1] The owner of an unpatented mining claim located on public land on or before October 21, 1976, must file with the proper BLM office by October 22, 1979, and by December 30 of each calendar year thereafter, a notice of intention to hold or proof of the assessment work performed on the claim during the preceding assessment year. 43 U.S.C. § 1744(a) (1976). Filing is accomplished when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f). Delay of the county recorder in processing and returning appellant's proof of labor did not preclude timely filing with BLM as the regulations provide that evidence of assessment work filed with BLM may take the form of an exact copy of the document "which was or will be filed for record pursuant to section 314(a) of the Act [FLPMA] in the local jurisdiction of the State where the claim or group of claims is located and recorded \* \* \*." 43 CFR 3833.2-2(a); see Harry J. Phillips, 47 IBLA 252 (1980).

Failure to comply with the statutory requirements governing the recordation of information relative to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. Edward P. Murphy, 48 IBLA 211 (1980); G. G. Monk, 47 IBLA 213 (1980); 43 CFR 3833.4. The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); A. J. Grady, 48 IBLA 218 (1980); Glen J. McCrorey, 46 IBLA 355 (1980).

When appellant failed to file timely either evidence of assessment work or notices of intention to hold the claims, BLM properly held the claims to have been abandoned and void. John Richard Bodie, 54 IBLA 93 (1981); Robert R. Eisenman, 50 IBLA 145 (1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

